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10 **UNITED STATES DISTRICT COURT**
11 **DISTRICT OF ARIZONA**

12 Grand Canyon West Ranch LLC,

13 Plaintiff,

14 v.

15 Sally Jewell, Secretary, United States
16 Department of Interior, *et al.*,

17 Defendants.

CIV-03-02496-PCT-NVW

**RESPONSE TO PLAINTIFF'S
REQUEST FOR ENTRY OF
EMERGENCY ORDER
REGARDING TEMPORARY
EASEMENT**

18 Comes now the Defendant, Sally Jewell, Secretary, United States Department of
19 Interior (hereinafter the "Defendant," "BIA," or "United States") and for its Response to
20 Plaintiff's Request for Entry of an Emergency Order Regarding Temporary Easement,
21 [Doc. No. 250], states as follows:

22 1. The United States delivered a Temporary Right of Way covering use of Old
23 Diamond Bar Road to Plaintiff on October 4, 2013, the day following Plaintiff's filing. As
24 illustrated below, Plaintiff was aware of difficulties in the BIA's delineating the scope of
25 the Temporary Right of Way due to the old road's irregular shape. Plaintiff has had the
26 Temporary Right of Way since October 4, 2013, but has yet to return a signed copy to the
27 Defendant.
28

1 2. Attached hereto as Dft. Exh. A is a September 30, 2013 communication to
2 Plaintiff regarding the status of BIA's drafting the Temporary Right of Way. Stated
3 therein:

4 I am informed that the center-line survey for the Temporary ROW across
5 Old Diamond Bar Road was completed last week and that the data is now at
6 the BIA office being finalized. Apparently, the alignment across Old
7 Diamond Bar Road varies in width at different locations, and our engineers
8 want to make the document as accurate as possible. I will get a copy of the
9 document to you this week, hopefully by Thursday, for signature and return.
10 In the event of a government shutdown, I will try to arrange for someone at
this Office to fax a copy to you for signature and return. My position is not
deemed essential to government functioning, and I will be prohibited from
working in the event of a shut down. Upon return of the signed copy, BIA
can file it in Mohave County and the parties can transition to the public use
of the Old Road.

11 3. Communication continued on Tuesday, October 1, 2013, the date on which
12 the recent Government shutdown began, when undersigned counsel sent another email to
13 Plaintiff's, informing Plaintiff's counsel of the status of the Temporary Right of Way. A
14 true and correct copy of that communication is attached hereto as Dft. Exh. B, which
15 stated, in part:

16 I understand and very much appreciate your position regarding use of the
17 Old Alignment and have been making efforts to complete the temporary
18 easement as quickly as possible. Please note that we were prepared to do so
19 during our mediation with Mr. Eckstein, but held off until you agreed to our
20 proposal last week and allowed the surveyors onto the Ranch on Thursday.
21 The BIA should finish drafting the easement this week, by Thursday or
Friday, and I have arranged for a contract legal assistant who is not
furloughed at our office to transmit the document to you for signature and
return. Whomever is available at the BIA can then file the document with
Mohave County and the public can begin using the old alignment.

22 To do so earlier, even with an agreement by the parties, would not be
23 possible. For one, I cannot agree to make the United States liable for any
24 accidents on the easement absent documented evidence of the BIA's
25 ownership of the temporary easement – i.e., if there is an accident on the Old
26 Alignment before an easement is recorded due to something wrong with the
27 road, Grand Canyon Ranch would be held liable, not the BIA. It is my
28 understanding from your pleadings that you do not want that responsibility,
and I do not want to force it upon you. Further, absent a legal document
permitting the BIA operate on the road, there is no jurisdictional basis for the
Tribal police to assume activities on the easement. Even more than tort
liability, we cannot, by agreement, grant criminal jurisdiction over a parcel
of private land. Therefore, if an accident were to occur before the easement
was recorded, I can only assume that your client would have to call the

1 Sheriff's department to investigate; and during that time, no police entity
2 would have authority to enforce speeding or other matters.

3 Again, I understand and sympathize with your eagerness to move forward.
4 As I stated last night, the easement is presently being drafted but has taken
5 slightly longer due to the non-traditional size and scope of the Old
6 Alignment. I have no control over my inability to work during the
7 Government shutdown, but have done my best to arrange for this to move
8 forward in my absence. Please note that I am legally prohibited from
9 working while the is [sic] shut down is taking place. I cannot respond to
10 emails, listen to my voicemail, etc., but I have arranged for the easement to
11 be transmitted to you for signature and return this week. It is the best I can
12 do under these circumstances to protect everyone's rights in light of liability
13 from the public use of this Old Alignment.

14 4. As stated above, undersigned counsel arranged for a contract legal assistant
15 who was not furloughed on October 1 through 17, to obtain the completed Temporary
16 Right of Way and transmit it to Plaintiff's counsel. The contract legal assistant obtained
17 the completed Temporary Right of Way on October 3, 2013 – the day Defendant was to
18 transfer the document to Plaintiff – at or around 3 p.m., but was unable to scan and email
19 the document to Plaintiff's counsel because of the large maps that were attached to the
20 document. Accordingly, the contract legal assistant physically delivered the documents to
21 Plaintiff's counsel the following day. *See* Dft. Exh. C (Temporary Right of Way, without
22 maps, and legal description).

23 5. The one-day delay in transmitting the Temporary Right of Way document to
24 Plaintiff's counsel was not done in bad faith, but was simply a function of unavoidable
25 delay due to extraneous matters outside the Defendant's control. The United States made
26 every effort to accommodate the potential for problems transmitting the document to
27 Plaintiff prior to the Government shutdown

28 6. Plaintiff has had the Temporary Right of Way since October 4, 2013.
Plaintiff has yet to sign and return the Temporary Right of Way, which would permit
traffic to pass along the portion of Old Diamond Bar Road traversing Plaintiff's property,
nor has Plaintiff deposited the Bond amount set forth in this Court's Temporary
Restraining Order.

7. As stated at this Court's hearing, absent recordation of the Temporary Right
of Way, the BIA has absolutely no legal authority to regulate, warn, and inform the

1 traveling public of its ability to use the Temporary Right of Way; the BIA cannot assume
2 liability for accidents on the Temporary Right of Way; nor can arrange for policing of the
3 Temporary Right of Way. Because Plaintiff has yet to sign and return the Temporary
4 Right of Way, the public continues to use the "Bypass Road" within meets and bounds of
5 the new alignment.

6 8. Attached hereto as Dft. Exh. D and E are additional communications
7 between counsel for the Hualapai Tribe and Plaintiff's counsel regarding the unsigned
8 Temporary Right of Way, which were transmitted communicated while undersigned
9 counsel was furloughed. Of note, Dft. Exh. E indicates discussion regarding Plaintiff's
10 continued desire to obtain a licensing agreement and/or "fee" from the Hualapai tribe for
11 the public's use of Old Diamond Bar Road.

12 9. The BIA is ready, willing, and able, to maintain the portion of the Old
13 Diamond Bar Road subject to the Temporary Right of Way as soon as Plaintiff signs and
14 returns the document included at Dft. Exh. C.

15 WHEREFORE, the Defendant respectfully requests that this Court DENY
16 Plaintiff's Request for Entry of an Emergency Order Regarding Temporary Easement.

17 Respectfully submitted this 21st day of October, 2013.

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19 JOHN S. LEONARDO
20 United States Attorney
21 District of Arizona

22 s/ Peter M. Lantka
23 PETER M. LANTKA
24 Assistant United States Attorney
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CERTIFICATE OF SERVICE

I hereby certify that on October 21, 2013, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

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s/Mary C. Bangart
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